

Message Text

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ACTION EB-07

INFO OCT-01 ISO-00 IO-13 AF-10 ARA-10 EA-07 EUR-12

NEA-10 OIC-02 SSO-00 NSCE-00 USIE-00 INRE-00

AGRE-00 CEA-01 CIAE-00 COME-00 DODE-00 FRB-03

H-01 INR-07 INT-05 L-03 LAB-04 NSAE-00 NSC-05

PA-01 EPG-02 AID-05 SS-15 STR-04 ITC-01 TRSE-00

PRS-01 SP-02 FEAE-00 OMB-01 /133 W

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O R 161732Z JUN 77

FM USMISSION GENEVA

TO SECSTATE WASHDC IMMEDIATE 8309

INFO ALL EC CAPITALS

AMEMBASSY OTTAWA

AMEMBASSY TOKYO IMMEDIATE

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PARIS ALSO FOR USOECD

E.O. 11652: N/A

TAGS: GATT, ETRD, JA

SUBJ: GATT COUNCIL DISCUSSION OF ZENITH CASE

REF: STATE 136922

BEGIN SUMMARY: IN SHORT MEETING, GATT COUNCIL ADOPTED
WORKING PARTY REPORT ON ZENITH COUNTERVAILING DUTY CASE.
JAPAN, EC AND OTHERS MADE EXPECTED STATEMENTS IN NON-
INFLAMATORY WAY AND FOLLOWED SCENARIO WORKED OUT IN CON-
SULTATIONS PRIOR TO THE MEETING. U.S. MADE STATEMENT
ON JUDICIAL PROCESS (PARA 13 OF WP REPORT) AND EC RESPONDED.
END SUMMARY.

1. IN DAYS PRIOR TO COUNCIL, WE MET WITH WP CHAIRMAN,
JAPANESE, EC AND CANADIAN REPS, AND WITH DG LONG AND OTHER
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MEMBERS OF GATT SECRETARIAT TO WORK OUT SCENARIO FOR
MEETING AND DRAFT WORDING FOR COUNCIL ADOPTION OF WORKING
PARTY REPORT. WE ALSO ATTEMPTED TO FIND ACCOMODATION
WITH EC AND JAPAN ON WORDING IN PARA 13 OF WP REPORT
RELATING TO JUDICIAL REVIEW, AND, WHILE JAPAN STATED
THAT NO CRITICISM OF OUR GOVERNMENTAL SYSTEM WAS IN-
TENDED, EC ATTEMPTS AT NEW PARA 13 DID NOT ALTER CRITICAL

THRUST OF PARAGRAPH. U.S. AND EC AGREED ONLY
COURSE LEFT WAS TO MAKE SEPARATE STATEMENTS ON ISSUE.

2. JAPANESE (AMB. SAWAKI) MADE LOW KEY STATEMENT REFERRING TO THEIR REMARKS IN THE WP, EMPHASIZING THAT THE U.S. ACTION IS ALREADY CAUSING SERIOUS EFFECTS TO THE TRADE OF JAPAN AND CALLING FOR COUNCIL ADOPTION OF THE REPORT. JAPANESE ADDED THAT EXPEDITIOUS CONSIDERATION OF MATTER BY GATT DEMONSTRATES THAT GATT CAN ACT QUICKLY WHEN REQUIRED.

3. THE EC (LUYTEN) SUPPORTED JAPAN AND ADDED THAT, IF EC EXPORTS HAD BEEN AT STAKE THE EC WOULD HAVE PROBABLY USED OTHER GATT PROCEDURES RELATING TO "BENEFITS AND ADVANTAGES". IF FACED WITH SIMILAR SITUATION, THE EC WOULD NOT REMAIN PASSIVE, BUT WOULD TAKE APPROPRIATE COUNTERACTION, LUYTEN ADDED. HE URGED THAT U.S. NOT IMPOSE COUNTERVAILING DUTIES (PRESUMABLE IF THE COURTS FIND IN FAVOR OF JAPAN) AND CALLED FOR THE ITEM TO BE KEPT ON THE COUNCIL AGENDA.

4. AUSTRIA, FINLAND, BRAZIL, INDIA, SWITZERLAND AND AUSTRALIA SUPPORTED VIEWS EXPRESSED BY JAPAN IN WP WHILE CANADA STATED THAT U.S. WOULD BE IN COUNTERVAILMENT OF GATT IF COUNTERVAILING DUTIES ACTUALLY LEVIED (BUT AVOIDED ADDRESSING QUESTION OF SUSPENSION OF LIQUIDATION). SEVERAL DELEGATES EXPRESSED DEEP CONCERN OVER THE POSSIBILITY OF A PROLIFERATION OF JAPAN TYPE DECISIONS, MOST NOTED THAT U.S. ADMINISTRATION IS LIMITED OFFICIAL USE

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ACTIVELY APPEALING THE CASE IN THE HIGHER COURTS, AND ALL SUPPORTED KEEPING THE MATTER UNDER CLOSE REVIEW.

5. U.S. THEN MADE SHORT STATEMENT AGREEING TO ADOPTION OF THE REPORT. WE ALSO NOTED THAT THE COURT'S DECISION DOES NOT REPRESENT THE POSITION OF THE U.S. EXECUTIVE BRANCH AND THAT THE MATTER IS BEING VIGOROUSLY PURSUED IN THE COURTS. WE ADDED, THAT IN VIEW OF THIS SITUATION, THE U.S. THOUGHT IT INAPPROPRIATE TO COMMENT ON SOME OF THE VIEWS EXPRESSED BY OTHERS.

6. WE ALSO READ, FOR INSERTION IN THE RECORD, STATEMENT DEFENDING U.S. JUDICIAL SYSTEM (PARA 4 OF REFTL), ADDING THAT GATT ART X(3) DIRECTS CPS TO INSTITUTE INDEPENDENT JUDICIAL PROCEDURES. EC THEN CRITICIZED U.S. STATEMENT AND ELABORATED ON EC INTENTIONS IN PARA 13 OF WP REPORT, STATING THAT CRITICISM WAS NOT DIRECTED SOLELY TO SYSTEM OF JUDICIAL REVIEW BUT THE ENTIRETY OF U.S. TRADE LAW AND THE AUTOMATIC APPLICATION OF PROCEDURES STEMMING

FROM THE TRADE ACT. LUYTEN QUOTED, IN SUPPORT OF HIS ARGUMENTS, COMMENTS ATTRIBUTED TO AMBASSADOR STRAUSS CONCERNING THE INTENT OF U.S. STEEL TO SEEK A SUMMARY COURT JUDGMENT: "ANYBODY HAS A RIGHT TO GO TO COURT FOR REDRESS OF INJURY BUT CERTAIN ISSUES DON'T LEND THEMSELVES TO JUDICIAL SOLUTIONS...THIS DECISION COULD CAUSE CHAOS IN INTERNATIONAL TRADE". WE REPLIED THAT THIS QUOTE ACTUALLY SUPPORTED BETTER THE U.S. STATEMENT ABOUT THE RIGHT OF JUDICIAL REVIEW AND DISAGREED WITH THRUST OF EC'S REMARKS. OTHER DELS REFRAINED FROM ENTERING THE DEBATE (AS AGREED BEFOREHAND).

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7. CHAIRMAN THEN OFFERED PREARRANGED LANGUAGE ON COUNCIL ADOPTION OF WP REPORT. EC SOUGHT TO CHANGE LANGUAGE IN LAST SENTENCE FROM "SO THAT APPROPRIATE ACTION MAY BE CONSIDERED" TO "SO THAT THE COUNCIL CAN TAKE APPROPRIATE ACTION", AND AFTER EC-US DEBATE ON WORDING WITH OTHER DELEGATIONS SUPPORTING EC FORMULATION, CHAIRMAN SUGGESTED COMPROMISE WORDING ACCEPTED BY COUNCIL AS FOLLOWS: "THE COUNCIL ADOPTS THE REPORT OF THE WORKING PARTY. THE COUNCIL ALSO EXPRESSED GRAVE CONCERN ON THE SERIOUS IMPLICATION OF THE UNITED STATES CUSTOMS COURT DECISION AND ITS CONSEQUENCES FOR WORLD TRADE, THE MTN AND THE

GATT SYSTEM ITSELF. ACCORDINGLY, THE COUNCIL DECIDES TO KEEP THE MATTER UNDER CLOSE REVIEW AND FOR THAT REASON TO KEEP IT ON ITS AGENDA IN ORDER TO TAKE SUCH ACTION AS MAY BE APPROPRIATE IN THE LIGHT OF FURTHER DEVELOPMENTS." THE CHAIRMAN INDICATED THAT THE ITEM WOULD NOT AUTOMATICALLY APPEAR ON FUTURE AGENDAS OF THE COUNCIL BUT COULD BE PUT ON THE AGENDAS AT THE REQUEST LIMITED OFFICIAL USE

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OF ANY MEMBER OF THE COUNCIL.

8. COMMENT: LUYTEN CONFIDED AFTER THE MEETING THAT HIS LAST MINUTE ATTEMPT TO CHANGE THE WORDING WAS THE ONLY WAY HE COULD KEEP BRUSSELS FROM ASKING THAT THE COUNCIL MAKE RECOMMENDATIONS ON THE ZENITH CASE. HE ALSO INDICATED THAT THE COMMISSION WAS "UPSET" AT U.S. INSISTENCE ON REOPENING A DEBATE ON PARA 13 OF THE WP. SORENSON

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